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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199819

DATE: October 28, 1980

MATTER OF: Richard Bercutt

DIGEST:

1. Bid which contains condition which limits Government's right to issue effective Notice to Proceed is nonresponsive and is properly rejected.
2. After bid opening a bidder may not delete a condition in its original bid regarding time for starting work on Government contract since Government requirement regarding time for starting work is material and bid may not be made responsive by changing a material part thereof after opening.
3. "Delivery" schedule is not limited to delivery of goods but includes contract performance period where procurement is for performance of services.

Richard Bercutt (Bercutt) protests the rejection of his low bids for two items as nonresponsive under invitation for bids (IFB) R5-14-80-116 issued by the United States Forest Service, Department of Agriculture. The IFB solicited bids for "cull tree felling" in three areas (items) of the Hayfork Ranger District. We deny the protest.

The Forest Service rejected Bercutt's bid because he included the following language at the end of the price schedule: "On the condition that work commencement be contracted to begin after August 21, 1980." The contracting officer determined that this statement imposed a condition which affected a material provision of the solicitation and limited the rights of the Government. We agree.

[Bid Rejection Protest]

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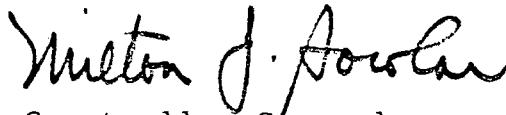
Bercutt contends that he inserted this language because paragraph 2e, Standard Form (SF) 33A which was part of the solicitation instructed offerors to "state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation." Bercutt maintains that the IFB neither indicated a definite time for performance of services nor required the "delivery" of anything. In this regard the IFB provided that: "Contractor shall commence work within 10 calendar days after receipt of Notice to Proceed and * * * insure that all work will be completed within the allotted contract time. Contract time for all items is 25 calendar days."

The concept of the responsiveness of a bid concerns whether the bidder has unequivocally offered to provide the requested items or services in total conformance with the terms and specifications of the invitation, and a bid which takes exception to the essential requirements of the invitation is not responsive. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. One such essential requirement is the delivery or performance requirements specified in the IFB. Federal Procurement Regulations (FPR) 1-2.404-2(a) (1964 ed.). Thus, a bid which imposes a condition which limits the substantive rights of the Government (where it affects price, quality, quantity or delivery) is nonresponsive and must be rejected. FPR 1-2.404-2(b). Here, by imposing the condition that work must commence after August 21, 1980, Bercutt limited the Government's right to issue an effective Notice to Proceed as it saw fit, and thereby limited the completion date of contract performance to suit his own particular needs. Such a condition renders a bid nonresponsive. See Coronis Construction Company, et al., B-186733, August 19, 1976, 76-2 CPD 177; Kipp Construction Company, B-131588, January 16, 1975, 75-1 CPD 20.

Bercutt nonetheless contends that FPR 1-2.404(2) should not apply because it only designates "delivery" as an essential requirement of the solicitation and not performance of services which is involved here. However, this distinction is not controlling because whether an IFB involves delivery of a product or performance of services, the Government's concern is that it receive the goods or services within the specified time. In fact, the Notice to Proceed was issued to the awardee on July 29 and the contract work should have been substantially completed by the time Bercutt indicated he would start performance. Further, with regard to Bercutt's suggestion that the

contracting officer should have waived this condition or deleted his bid statement, we have repeatedly stated that a bidder may not make its bid responsive by changing a material part thereof after bid opening. To permit this action essentially would allow Bercutt to submit a new bid contrary to the rules of competitive bidding. 40 Comp. Gen. 432 (1961).

The protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States